IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 07.11.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.803 of 2003

1.Ramasamy

2.Allamuthu

3.Gurusamy

4.Kandasamy

5.Bomma Naicker ... Appellants (Petitioners in WP.No.13386/95)

Vs.

1.The Government of Tamil Nadu,
rep. by its Secretary,
Social Welfare Department,
Fort St. George, Chennai-9.

2.The Special Tahsildar,
(Land Acquistiion)
Adi Dravidar Welfare
Unit-I, Madurai. .. Respondents (Respondents in do)

Writ appeal filed under Clause 15 of the Letters Patent against the order dated 07.08.2002 made in W.P.No.13386 of 1995 presented under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the record of the respondents relating to the notification in G.O.Ms.No.301 Social Welfare dated 31.1.1984 as published in Part II Section 2 of the Tamil Nadu Government Gazette Extra Ordinary dated 07.2.1984 and quash the said acquisition proceedings.

For Appellants : Mrs.Vijayakumari Natarajan
For respondents : Mr.P.Subramanian,
Government Advocate

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.)

The above writ appeal is directed against the order of the learned single Judge dated 07.08.2002 made in W.P.No.13386 of 1995, in and by which, the learned single Judge, after finding that there is no merit in the claim and also of the fact that the writ petition has to be dismissed on the ground of laches, has dismissed the same.

2. Heard the learned counsel appearing for the appellants as well as the learned Government Advocate for respondents.

3. It is not in dispute that Tamil Nadu Acquisition of Land for Harijan Welfare Schemes Act (31 of 1978) (hereinafter referred to as "the Act) came into force with effect from 24.01.1979. It is further not in dispute that the said Act was struck down by the Division Bench of this Court on 09.09.1981. Only on 22.11.1994, the Supreme Court upheld the Act as Valid in the decision reported in AIR 1995 Supreme Court, 2114 (STATE OF TAMIL NADU VS. ANANTHI AMMAL). In the case on hand, it is not in dispute that the notification under Section 4(1) of the Act was issued under Central Act on 31.01.1984 and the same has been published in the public Gazette on 07.02.1984. After enquiry under Section 5-A and declaration under Section 6, finally award was passed on 29.03.1985. All the above factual aspects are not in dispute. In other words, when the Tamil Nadu Act was not in existence, the notification under Section 4(1) of the Act was published under the Central Act and finally award was passed on 29.03.1985 under the provisions of the Central Act, which is the only Act available and applicable on the said date. As stated earlier only after the judgment of the Supreme Court dated 22.11.1994, the State is permitted to invoke the provisions of the Tamil Nadu Act for implementation of the schemes intended for Harijans. In this back ground, let us consider the contentions raised by the learned counsel for the appellants and the impugned order of the learned single Judge dismissing the writ petition.

4. At the foremost, the learned counsel for the appellants submitted that no proper notice was issued to the mother of the appellants, who was the owner of the land at the relevant time. In view of the stand taken by the appellants that their mother participated in the enquiry under Section 5-A of the Act and submitted her objection etc., the said contention is liable to be rejected.

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5. The learned counsel for the appellants next submitted that Rule 3-B has not been complied with. In the absence of correct information to the effect as to when the objection was submitted by the appellants' mother, the grievance on this aspect cannot be considered.

6. Finally, the learned counsel for the appellants, by drawing our attention to Sections 20 to 22 of the Tamil Nadu Act, has submitted that inasmuch as the acquisition proceedings were initiated after commencement of the State Act, the entire proceedings are liable to be quashed. We are unable to accept the said contention for the following reasons.

7. In the earlier part of the order, we have already referred to the relevant dates. For the sake of repetition, we reiterate the same once again that the notification under Section 4(1) of the Act was published in the Government Gazette on 07.02.1984. Admittedly, the Tamil Nadu Act was not in the statute book. Only after the order of the Supreme Court dated 22.11.1994, the State Government is free to invoke the provisions of Tamil Nadu Act for execution of the scheme intended for the welfare of the Harijans. In the case on hand, as already stated, the award came to be passed on 29.03.1985, i.e., well before the judgment of the Supreme Court. In such circumstances, by applying the principles explained by the Honourable Supreme Court in the very same decision reported in AIR 1995 Supreme Court, 2114 (STATE OF TAMIL NADU VS. ANANTHI AMMAL), particularly in para 18, we reject the contention of the learned counsel for the appellants.

8. For the same reasons, we are of the view that the Division Bench decision reported in 2004 Writ law Reporter 20 (M.R.KAVITHA VS. THE DISTRICT COLLECTOR, NORTH ARCOT, ETC AND ANOTHER) is not helpful to the case of the appellants. To put it clear, on the date when the Government had issued the notification under Section 4(1) of the Act conveying their stand that the lands specified in the schedule to the said notification are needed for public purpose viz., for provisions of house sites to the landless Adi Dravidars, Tamil Nadu Act 31 of 1978, was not in existence, by applying the said provisions, the State is not permitted to acquire any land because of the order of this Court dated 09.09.1981. In such circumstances, the respondents had rightly invoked the provisions of the Central Act and issued the notification under Section 4(1) of the Act and acquired the land by passing an award on 29.03.1985, i.e., well before the judgment of the Supreme Court.

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9. In such circumstances, we do not find any error or infirmity in the procedure adopted. Apart from this, inasmuch as the appellants themselves have admitted that their mother has participated in the enquiry under Section 5-A of the Act, which was held in the year 1984, there is no explanation at all for not filing the writ petition till 1995 when the award was passed in the year 1985. Hence, we are in agreement with the conclusion arrived at by the learned single Judge that the writ petition is also liable to be dismissed on the ground of laches. In these circumstances, we do not find any valid ground for interference. Consequently, the writ appeal fails and the same is dismissed. No costs. Consequently, WAMP.No.979 of 2003 is also dismissed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
Social Welfare Department,
Fort St. George, Chennai-9.

2.The Special Tahsildar,
(Land Acquistiion)
Adi Dravidar Welfare
Unit-I, Madurai.

1 cc To Mr.S.Natarajan, Advocate, SR.53663.
1 cc To The Government Pleader, SR.53073.

W.A.No.803 of 2003

JRG(CO)
RVL 24.11.2006

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